UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

MARCEL HUGUENIN	:	
Petitioner	:	
	:	
v.	:	
	:	Civ. No. 3:04 CV 2093 (CFD)
	:	
THERESA LANTZ, CONNECTICUT	:	
COMMISSIONER OF CORRECTION;	:	
and RICHARD BLUMENTHAL,	:	
ATTORNEY GENERAL	:	
Respondents	:	

ORDER OF DISMISSAL

Petitioner Marcel Huguenin was incarcerated pursuant to a judgment of the Connecticut Superior Court. While he was incarcerated, he filed an Application for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 with this Court. The application claimed that the incarceration imposed by the Connecticut Superior Court was increased in violation of an ex post facto clause of the United States Constitution, Art. 1, § 10 cl. 1. The respondents filed a motion to dismiss the application as untimely. On October 28, 2005, before the Court ruled on the motion to dismiss, Huguenin was released from incarceration. On December 5, 2005, the Court entered an Order to Show Cause as to why the case should not be dismissed following Huguenin's release. As will be discussed below, Huguenin's habeas petition is dismissed as moot.

I Background

On June 30, 1995, Huguenin pleaded guilty to six related state criminal offenses, each of

which was charged under a separate docket number. On November 15, 1995, a judge of the Connecticut Superior Court entered a judgment sentencing Huguenin to a total effective sentence of twenty-five years' imprisonment, execution suspended after eleven years, as well as five years' probation to follow his imprisonment.

Five of the offenses underlying Huguenin's conviction were committed prior to October 1, 1994, while the sixth offense was committed after that date. The parties agreed that Huguenin is receiving "good time credits," pursuant to Conn. Gen. Stat. §§ 18-7a(c), 18-98a, 18-98b and 18-98d(b) for the five sentences related to offenses occurring before October 1, 1994. The parties also agreed that although good time credits were "applied" to the time sheet for the sentence related to the one offense which occurred after October 1, 1994, those credits did advance his release date. Consequently, pursuant to the sentences imposed by the Superior Court, Huguenin was scheduled to be released at the completion of the sentence for that offense (which the parties refer to as "the controlling offense") on October 30, 2005. Huguenin was released on October 28, 2005.

II Procedural History

On March 10, 2000, Huguenin filed a *pro se* application for writ of habeas corpus in the Connecticut Superior Court. On June 13, 2002, Huguenin's application was denied. On June 25, 2003, the ruling was summarily affirmed by the Connecticut Appellate Court. Although the Connecticut Supreme Court granted Huguenin's petition for certification to appeal on November 30, 2004, the Supreme Court dismissed his appeal on the ground that certification was improvidently granted. Huguenin v. Commissioner of Correction, 2004 Conn. LEXIS 506, *4

(Nov. 30, 2004). Huguenin, with the assistance of counsel, filed the instant § 2254 application with this Court on December 10, 2004. After Huguenin was released from custody, the Court entered an order to show cause as to why the case should not be dismissed.

III Discussion

Petitioner contends that his habeas petition is not moot because he is currently serving a term of probation. Therefore, the argument he made in his original habeas petition — that with the appropriate application of good time credit, his term of incarceration would be shorter — is still relevant; had he been released from incarceration earlier, he likewise would complete his term of probation earlier. Respondent argues that Huguenin's term of probation is entirely separate from his term of imprisonment, and therefore unaffected by the application of good time credit.

The United States Supreme Court, in Spencer v. Kemna, 523 U.S. 1 (1998), addressed the issue of mootness in a habeas petition brought under 28 U.S.C. § 2254 by a state prisoner while he was incarcerated, who later was released onto parole. The Court asked "whether petitioner's subsequent release caused the petition to be moot because it no longer presented a case or controversy under Article III, § 2, of the Constitution." Id. at 7. The Court held that a habeas petition is not moot for a petitioner who remains "in custody" while serving a term of probation after imprisonment who suffers the "collateral consequence" of conviction.[1] Id. The Court

[1] The "'in custody' requirement is jurisdictional and is satisfied if the petition is filed while the petitioner is in custody pursuant to the conviction or sentence being attacked." Butti v. Fischer, 385 F. Supp. 2d. 183, 184-85 (W.D.N.Y. 2005) citing Spencer v. Kemna, 523 U.S. 1 (1998).

stated:

> An incarcerated convict's (or a parolee's) challenge to the validity of his conviction always satisfies the case-or-controversy requirement, because the incarceration (or the restriction imposed by the terms of the parole) constitutes a concert injury, caused by the conviction and redressable by invalidation of the conviction, however, some concrete and continuing injury other than the now-ended incarceration or parole — some "collateral consequence" of the conviction — must exists if the suit is to be maintained.

Id. While it may be true that Huguenin continues to suffer a variety of collateral consequences after his release from incarceration and as he serves his five-year term of probation, this case is distinct from those contemplated in Spencer. Huguenin has not, in his habeas petition or in any subsequent filings, challenged the fact of his conviction. Rather, Huguenin challenged the duration of his incarceration. Therefore, the mootness issue the Court faces is whether a challenge to the duration of incarceration still presents a case or controversy after the petitioner is released from incarceration and is serving a term of probation.

Petitioner argues that despite his release from incarceration, if his good-time credits had been appropriately applied to shorten his incarceration, his term of probation would terminate earlier as a result. As a factual matter, it may be true that Huguenin would complete his term of probation earlier had his good time credit been differently applied.[2] As a legal matter, however, it is not the case that a period of incarceration that perhaps should have been shorter should necessarily shorten a subsequent period of probation. Probation is distinct from incarceration as part of a sentence. As the Connecticut Superior Court stated in finding that a prisoner who served an additional two years of incarceration was not excused from his term of probation:

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[2]The Court does not address the merits of Petitioner's argument concerning the appropriate application of his good time credits.

> [F]rom a public policy standpoint it would make no sense for a consecutive sentence to run during the probationary period since it would negate the intention of the sentencing court with respect to the original sentence, that is, for there to be a period of probation following release from prison for rehabilitative purposes while still under supervision.

State of Connecticut v. Clarke, 1998 Conn. Super. LEXIS 3425 *4 (Conn. Super. Ct., Dec. 2, 1998). Likewise, the Tenth Circuit noted in a case applying New Mexico law, "A probationary term is statutorily distinct from a term of incarceration, is served at the conclusion of the term of incarceration . . . is subject to the control of the sentencing court . . . and . . . is not subject to the statutory provisions governing the application of good time credits to incarceration." Aragon v. Shanks, 144 F.3d 690, 692 (10th Cir. 1998).

Other federal and state courts have similarly interpreted sentencing statutes, finding clear legislative intent to distinguish between incarceration and probation, in the state context, and between incarceration and supervised release, in the federal context. In a controlling example here, and in further support of the proposition that probation is distinct from incarceration, a Connecticut Appellate Court interpreted the state probation statute, Conn. Gen. Stat. § 53a-31, in Connecticut v. McFarland and held that, "[p]robation commences upon the termination of the custodial portion of the sentence by operation of law." 36 Conn. App. 440, 445 (Conn. App. Ct., Dec. 20, 1994). In the context of applying the federal supervised release statute, 18 U.S.C. § 3583, the Supreme Court held in United States v. Johnson, 529 U.S. 53, 60 (2000) that a prisoner who served too long a term of incarceration was not necessarily entitled to a shortened period of supervised release. The Court stated:

> All concede that respondent's term of imprisonment should have ended earlier than it did. It does not follow, however, that the term of supervised release commenced as a matter of law, once he completed serving his lawful sentence. It

> is true the prison term and the release term are related, for the latter cannot begin until the former expires. Though interrelated, the terms are not interchangeable.

Id., at 58-59. Because there is great similarity in the Connecticut probation statute and the federal supervised release statute, Johnson provides substantial guidance in this case.[3] Petitioner Huguenin does not argue that his term of probation should be reduced based on any other reasons that his term of incarceration was too long. Based on Johnson and McFarland, the Court finds that it lacks authority to shorten Huguenin's probation term based on the alleged misapplication of his good time credits.

Therefore, pursuant to § 2254, Huguenin's petition **[Doc. # 1]** is dismissed as moot. A certificate of appealability shall not issue as Petitioner has not made a substantial showing of the denial of constitutional right.

SO ORDERED this _29th _ day of March 2006, at Hartford, Connecticut.

/s/ CFD
CHRISTOPHER F. DRONEY
UNITED STATES DISTRICT JUDGE

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[3] The Connecticut probation statute, Conn. Gen. Stat. § 53a-31(a) states:

> A period of probation or conditional discharge commences on the day it is imposed, except that, where it is preceded by a sentence of imprisonment with execution suspended after a period of imprisonment set by the court, *it commences on the day the defendant is released from such imprisonment*. Multiple periods, whether imposed at the same or different times, shall run concurrently. (Emphasis added).

The federal supervised release statute, 18 U.S.C. § 3583(a) states:

> In general. The court, in imposing a sentence to a term of imprisonment for a felony or a misdemeanor, may include as a part of the sentence a requirement that the defendant be placed on a term of supervised release *after imprisonment*, except that the court shall include as a part of the sentence a requirement that the defendant be placed on a term of supervised release if such a term is required by statute or if the defendant has been convicted for the first time of a domestic violence crime as defined in section 3561(b) [18 USCS § 3561(b)]. (Emphasis added).